TRANSCRIPT OF RECORD

Supreme Court of the United States.

OCTOBER TERM, 1936

No. 370

MARIAN S. HONEYMAN, APPELLANT,

vs.

HERBERT G. HANAN, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF HERBERT W. HANAN, DECEASED

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK

FILED SEPTEMBER 15, 1936.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 370

MARIAN S. HONEYMAN, APPELLANT,

vs.

HERBERT G. HANAN, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF HERBERT W. HANAN, DECEASED

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK

INDEX.

	Original	Print
Record on appeal to Court of Appeals of New York	a	1
Remittitur of Court of Appeals	a	1
Order amending remittitur	d	3
Statement under Rule 234	1	4
Notice of appeal to Appellate Division	2	4
Order granting motion for judgment	3	5
Judgment appealed from	5	6
Notice of motion for judgment, etc.	8	8
Summons	9	8
Amended complaint	10	9
Exhibit "A"—Bond in suit	15	12
Opinion of Smith, J.	19	15
Waiver of certification	20	15
Notice of appeal to Court of Appeals	21	16
Order of affirmance, Appellate Division	23	16
Judgment of affirmance appealed from	24	17
Order granting leave to appeal	26	18
Affidavit of no opinion by Appellate Division	27	18

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 2, 1936.

—8455-C

	Original	Print
Record on appeal to Court of Appeals of New York—Continued.		
Waiver of certification	28	19
Order on remittitur	29	19
Judgment on remittitur	31	21
Stipulation as to transcript of record	33	22
Order allowing appeal	34	22
Petition for appeal	36	23
Citation (omitted in printing)	40	
Assignments of error	41	26
Bond on appeal (omitted in printing)	44	
Statement of points to be relied upon and designation as to printing record	46	28

[fol. a]

IN COURT OF APPEALS OF NEW YORK

STATE OF NEW YORK, ss:

Pleas in the Court of Appeals held at the Court of Appeals Hall, in the City of Albany, on the 19th day of May, in the year of our Lord one thousand nine hundred and thirty-six, before the Judges of said Court.

Witness, the Hon. Frederick E. Crane, Chief Judge, Presiding. John Ludden, Clerk.

MARIAN S. HONEYMAN, Appellant,

ag'st

HERBERT G. HANAN, as Exr. &c., Respondent

REMITTITUR—May 20, 1936

Be it Remembered, that on the 2nd day of April, in the year of our Lord one thousand nine hundred and thirty-six, Marian S. Honeyman, the appellant, in this cause, came here into the Court of Appeals, by Robert B. Honeyman, her attorney, and filed in the said Court a Notice of Appeal and return thereto from the order and judgment of the Appellate Division of the Supreme Court in and for the Second Judicial Department. And Herbert G. Hanan, as executor, &c., the respondent in said cause, afterwards appeared in said Court of Appeals by Anthony F. Tuozzo, his attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Robert B. Honeyman, of counsel for the appellant; and by Mr. James S. Brown, Jr., of counsel for the respondent; and after due deliberation had thereon, [fol. b] did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be, and the same hereby is affirmed with costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

And afterwards to wit, on the 5th day of June 1936, an order was duly made amending the remittitur herein, a certified copy of which order is hereto attached and made a part hereof.

Therefore, It is considered that the said judgment be affirmed with costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court before the Justices thereof, etc.

John Ludden, Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerks Office

Albany, May 20, 1936.

I hereby certify, that the preceding record contains a correct transcript of the proceedings in said cause in the attached thereto.

(Seal.) John Ludden, Clerk.

[fol. c] SIR:

Please take notice that the within is a true copy of a Remittitur this day filed herein in the office of the Clerk of Kings County.

Dated, N. Y., June 12, 1936.

Yours, etc., Anthony F. Tuozzo, Attorney for Defendant, Office and Post Office Address, 66 Court Street, Borough of Brooklyn, New York City.

To Robert B. Honeyman, Esq., Attorney for Plaintiff.

Due and timely service of a copy of the within Rec'd June 17/36, is hereby admitted.

Dated, N. Y., —— —, 193-.

——, Attorney for ——.

[fol. d] IN COURT OF APPEALS OF NEW YORK

[Title omitted]

ORDER AMENDING REMITTITUR—June 5, 1936

A motion to amend the remittitur in the above cause having been heretofore made herein upon the part of the appellant, papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motion be and the same hereby is granted, and said remittitur amended by adding thereto the following:

A question under the Federal Constitution was presented and necessarily passed upon by this Court. The plaintiff contended that Chapter 794 of the Laws of the State of New York, enacted in 1933, as amended (Sections 1083-a and 1083-b of Civil Practice Act), impair the obligations of contracts, and thus violate Article 1, Section 10, of the Constitution of the United States. This court held that such laws do not violate said provision of Article 1, Section 10, of the Constitution of the United States.

And, the Supreme Court of the State of New York is [fol. e] hereby requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

A copy.

Rufus Kimball, Deputy Clerk.

[fol. f] SIR:

Please take notice that the within is a true copy of an Order entered herein in the office of the Clerk of Kings County on the 12th day of June, 1936.

Dated, N. Y., June 12th, 1936.

Yours, etc., Anthony F. Tuozzo, Attorney for Defendant, Office and Post Office Address, 66 Court Street, Borough of Brooklyn, New York City.

To Robert B. Honeyman, Esq., Attorney for Plaintiff.

Due and timely service of a copy of the within Rec'd June 17/36, is hereby admitted.

Dated, N. Y., —— —, 193-.

——, Attorney for ——.

[fol. 1] IN COURT OF APPEALS OF NEW YORK

MARIAN S. HONEYMAN, Appellant,

vs.

HERBERT G. HANAN, as Executor of the Last Will and Testament of Herbert W. Hannan, Deceased, Respondent

STATEMENT UNDER RULE 234

The above-entitled action was commenced by the service of the summons and complaint upon the defendant on May 10, 1935. On May 28, 1935, the amended complaint was served, and on June 11, 1935, motion papers were served by respondent to dismiss cause of action.

The order of the Special Term granting the motion was entered July 3, 1935, and judgment was entered thereon on July 12, 1935, dismissing the complaint and for costs. The Appellate Division affirmed the order and judgment of the Special Term by order entered December 30, 1935, and the judgment of affirmance was duly entered in the office of the Clerk of Kings County on January 13, 1936. Motion was made in the Appellate Division for leave to appeal, which was denied, and on motion the Court of Appeals granted leave to appeal.

There has been no change of parties or attorneys.

[fol. 2] IN SUPREME COURT OF NEW YORK, COUNTY OF KINGS

[Title omitted]

NOTICE OF APPEAL TO APPELLATE DIVISION

SIRS:

Please take notice that the appellant above named hereby appeals to the Appellate Division of the Supreme Court in and for the Second Judicial Department from the order of the Special Term of the Supreme Court dismissing appellant's amended complaint, entered and filed in the office of the Clerk of the County of Kings on the 3rd day of July, 1935, and from the judgment of the Spe-

cial Term of the Supreme Court, in the above-entitled action, entered and filed in the office of the Clerk of the County of Kings on the 12th day of July, 1935, in favor of the defendant and against the plaintiff, for the sum of Fif-
[fol. 3] teen and 95/100 Dollars ($15.95), and from each and every part of said order and judgment.

Dated, New York, August 1st, 1935.

Yours, etc., Robert B. Honeyman, Attorney for Appellant, No. 61 Broadway, Borough of Manhattan, New York City.

To The Clerk of the County of Kings. Anthony F. Tuozzo, Esq., Attorney for Respondent, 66 Court Street, Brooklyn, N. Y.

In Supreme Court of New York, County of Kings

Order Granting Motion for Judgment—July 3, 1935

The defendant having moved this Court for judgment, [fol. 4] pursuant to Rule 106 of the Rules of Civil Practice, dismissing the plaintiff's amended complaint herein upon the ground that it appears on the face thereof that said amended complaint does not state facts sufficient to constitute a cause of action against the defendant, and said motion having come duly on to be heard before me on the 17th day of June, 1935, and after hearing Anthony F. Tuozzo, attorney for the defendant, by James S. Brown, Jr., of counsel, and after reading and filing the notice of motion dated June 11th, 1935, and the plaintiff's amended complaint herein in support of said motion, and after hearing Robert B. Honeyman, Esq., attorney for the plaintiff, in opposition thereto, and due deliberation having been had, it is hereby

Ordered that said motion be and the same hereby is in all respects granted, and that judgment be entered herein in favor of the defendant and against the plaintiff, dismissing the plaintiff's amended complaint with costs of this action to be taxed by the Clerk of this Court, and costs of this motion.

Enter.

Peter P. Smith, Justice of the Supreme Court.

Granted July 3, 1935. John N. Harman, Clerk.

[fol. 5] IN SUPREME COURT OF NEW YORK, KINGS COUNTY

STATEMENT FOR JUDGMENT

Costs

Costs before notice of trial	$10.—

Disbursements

Clerk's fees on entering judgment	1.25
Taxation of costs	1.—
Satisfaction piece	.25
Transcript and filing	.60
Sheriff's fees on execution and mileage	2.85
Total	$15.95

CITY & STATE OF NEW YORK,
County of Kings, ss:

James S. Brown, Jr., being duly sworn, deposes and says: That he is an attorney and counselor-at-law and is associated with Anthony F. Tuozzo, attorney for the defendant herein, and has full charge of the above-entitled action and is familiar therewith.

That the plaintiff's complaint herein was duly served on the 10th day of May, 1935. That thereafter the defendant duly served upon the attorney for the plaintiff a notice of motion, dated May 24th, 1935, and returnable May 29th, 1935, to make the said complaint more definite and certain in various respects specified in said notice. That said mo-[fol. 6] tion was on consent adjourned to June 4th, 1935. That thereafter and on the 28th day of May, 1935, the plaintiff served her amended complaint complying with the demands of the aforementioned notice of motion, and the said motion to make the original complaint more definite and certain was therefor withdrawn. That before any answer was interposed herein and on the 17th day of June, 1935, a motion was duly made by the defendant for an order dismissing the plaintiff's said amended complaint with costs on the ground that it appeared on the face thereof that it did not state facts sufficient to constitute a cause of action against the defendant, and said motion was granted and an order was entered thereon directing

that judgment be entered herein in favor of the defendant and against the plaintiff with costs as taxed by the Clerk.

That the disbursements above mentioned have been made or will necessarily be incurred herein and are reasonable in amount.

James S. Brown, Jr.

Sworn to before me this 10th day of July, 1935. Selma J. Spandau, Commissioner of Deeds for the City of New York, Residing in the Borough of Brooklyn. Kings Co. Reg. No. 6017, Kings Co. Clerk's No. 140. N. Y. Co. Reg. No. 2386, N. Y. Co. Clerk's No. 52. Term expires January 23, 1936.

[fol. 7] JUDGMENT

The summons and complaint in this action having been personally served on the defendant on the 10th day of May, 1935, and an amended complaint having been duly served on the 28th day of May, 1935, and a motion having been duly made on the 17th day of June, 1935, to dismiss the said amended complaint upon the ground that it appeared on the face thereof that said amended complaint did not state facts sufficient to constitute a cause of action against the defendant, and an order having been entered on the 2nd day of July, 1935, granting the said motion and directing that judgment be entered herein in favor of the defendant and against the plaintiff dismissing the plaintiff's complaint with costs,

Now on motion of Anthony F. Tuozzo, attorney for the defendant herein, it is

Adjudged, that Herbert G. Hanan, as executor of the last will and testament of Herbert W. Hanan, deceased, the defendant herein, do recover of the plaintiff, Marian S. Honeyman, the sum of Fifteen & 95/100 Dollars costs and disbursements, and that the defendant have execution therefor.

John N. Harman, Clerk.

[fol. 8] In Supreme Court of New York, County of Kings

Notice of Motion for Judgment, etc.

Sir:

Please take notice that, upon the amended complaint in this action, the defendant will move the above named Court at a Special Term, Part I thereof for the hearing of motions to be held at the County Court House in the Borough of Brooklyn, City of New York, on the 17th day of June, 1935, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for judgment, pursuant to Rule 106 of the Rules of Civil Practice, dismissing the plaintiff's said amended complaint on the ground that it appears upon the face thereof that said amended complaint does not state facts sufficient to constitute a cause of action, and for such other and further relief as to the Court may seem just and proper together with the costs of this motion.

Dated June 11th, 1935.

Yours, etc., Anthony F. Tuozzo, Attorney for Defendant, Office & P. O. Address, No. 66 Court Street, Borough of Brooklyn, City of New York.

To Robert B. Honeyman, Esq., Attorney for Plaintiff, 61 Broadway, New York City.

[fol. 9] In Supreme Court of New York, County of Kings

[Title omitted]

Summons

To the above-named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney, within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear,

or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated May 2, 1935.

Robert B. Honeyman, Attorney for Plaintiff, Office and Post Office Address, No. 61 Broadway, Borough of Manhattan, New York City.

[fol. 10] In Supreme Court of New York, County of Kings

Amended Complaint

Plaintiff, for her amended complaint here, alleges, upon information and belief:

I. That on or about the 10th day of January, 1907, John H. Hanan Realty Company, together with John H. Hanan, for the purpose of securing to Louise L. Williams, J. Harvey Ladew and Richard T. Greene, Trustees of the trusts created in and by the Last Will and Testament of Rebecca Ladew, deceased, the sum of One Hundred and Eighteen Thousand Dollars ($118,000), and interest duly made, executed and delivered to them their bond, bearing date January 10th, 1907, and sealed with their seals, wherein and whereby they covenanted to pay to said parties, or their assigns, the said sum of One Hundred and Eighteen Thousand Dollars ($118,000) in two payments, Eighteen Thousand Dollars ($18,000) to be paid on the 10th day of January, 1909, and the balance of One Hundred Thousand Dollars ($100,000) on the 10th day of January, 1912, with interest at the rate of five per cent (5%), payable semi-anually.

II. That as collateral security for the payment of said indebtedness, there was made, executed and delivered a mortgage, bearing even date with said bond, wherein and whereby the said John H. Hanan Realty Company mortgaged to the said Trustees certain premises at the southeast corner of Bleecker and Elizabeth Streets, Borough of [fol. 11] Manhattan, City of New York, more particularly in said mortgage described; that said mortgage was duly recorded in the office of the Register of the County of New York on January 14th, 1907.

III. That thereafter, said bond and mortgage were duly assigned and delivered to John H. Hanan.

IV. That on or about the 9th day of August, 1920, said John H. Hanan, together with Herbert W. Hanan and Addison G. Hanan, for the purpose of securing to Martin Taylor and Leander H. LaChance, as General Guardians of the person and estate of Marian Stewart, and to said Martin Taylor and Leander H. LaChance, as General Guardians of the person and estate of Jean Stewart, the sum of Sixty Thousand Dollars ($60,000) and interest, duly made, executed and delivered to them their joint and several bond, in writing and under seal, bearing date the 9th day of August, 1920, wherein and whereby they covenanted to pay to the said parties, or their assigns, the said sum of Sixty Thousand Dollars ($60,000) on the 17th day of August, 1923, with interest thereon at the rate of six per cent. (6%) per annum, payable semi-annually; that a copy of said bond is hereto annexed and marked Exhibit A.

V. That as collateral security for the payment of said indebtedness, the said John H. Hanan duly assigned the bond and mortgage set forth in Paragraphs I and II hereof to the said Martin Taylor and Leander H. LaChance, as General Guardians of the person and estate of Marian Honeyman, and to said Martin Taylor and Leander H. [fol. 12] LaChance, as General Guardians of the person and estate of Jean Stewart, and delivered the same to Martin Taylor and Leander H. LaChance as General Guardians of the person and estate of Marian Honeyman, and to said Martin Taylor and Leander H. LaChance, as General Guardians of the person and estate of Jean Stewart, and also an extension agreement, in writing, executed by the said John H. Hanan, extending the time for the payment of the said indebtedness evidenced by the said bond, dated January 10, 1907.

VI. That the said John H. Hanan, Herbert W. Hanan and Addison G. Hanan were the officers and owners of the stock of the said John H. Hanan Realty Company.

VII. That thereafter, the bond of the said John H. Hanan, Herbert W. Hanan and Addison G. Hanan, together with the bond and mortgage hereinbefore referred to, were, by instruments of assignment duly recorded, duly

assigned to the plaintiff herein, who is now the owner and holder thereof.

VIII. That thereafter the said John H. Hanan Realty Company failed to comply with the terms of the said bond and mortgage and failed to pay the taxes on the mortgaged premises or the interest on the said bond, and that thereupon, and on or about September 22nd, 1933, the plaintiff began an action to foreclose said mortgage in New York County, and in said action the defendant herein was a party defendant.

[fol. 13] IX. That in said foreclosure action, a motion for summary judgment was granted against said John H. Hanan Realty Company, the defendant therein, and a sale of the mortgaged premises directed; and thereafter, and on or about March 2nd, 1934, said premises, pursuant to said judgment, were duly sold and the proceeds, after the payment of the expenses of sale and taxes, applied upon account of the indebtedness due the plaintiff. That the Referee's deed upon said sale was dated on or about March 5th, 1934, and was recorded on or about March 7th, 1934, in the office of the Register of the County of New York, and that the Referee's report of sale was duly confirmed by the Supreme Court of New York County by order bearing date on or about May 5th, 1934.

X. That a motion was thereafter duly made for a deficiency judgment, but same was denied, and that said foreclosure action, after the sale of the mortgaged premises, was discontinued as to the defendant herein on or about March 20th, 1935, by the filing of a stipulation of discontinuance.

XI. That the deficiency due the plaintiff, as shown by the report of the Referee to sell, duly filed in the office of the Clerk of New York County on the 7th day of March, 1934, was Fifty-eight Thousand Five Hundred Twenty-three and 35/100 Dollars ($58,523.35).

XII. That thereafter the plaintiff herein received from the Receiver, duly appointed to collect the rents and profits of the said premises in said foreclosure action, the sum of [fol. 14] Five Hundred Fifty-four and 01/100 Dollars ($554.01), and that plaintiff has received no other sum upon account of said mortgage indebtedness.

XIII. That there is still due, owing and unpaid to the plaintiff on account of said indebtedness the sum of Fifty-seven Thousand Nine Hundred Sixty-nine and 34/100 Dollars ($57,969.34), with interest thereon from the 7th day of March, 1935.

XIV. That under the terms of the bond, Exhibit A hereto annexed, Herbert W. Hanan, his heirs, executors and administrators, became bound to pay the said plaintiff the amount due on account of the said indebtedness and to hold this plaintiff from and against all loss, damages, costs and expenses, which she might at any time sustain by reason of any default in any of the terms, provisions, covenants or conditions of the said bond and mortgage.

XV. That said Herbert W. Hanan died on or about the 21st day of July, 1933, and that Letters Testamentary were duly issued by the Surrogate of Kings County to Herbert G. Hanan, and that said Herbert G. Hanan duly qualified and is now acting as Executor of the Last Will and Testament of Herbert W. Hanan.

XVI. That the said John H. Hanan and Addison G. Hanan died prior to the failure of the said John H. Hanan Realty Company to comply with the terms of said bond and mortgage, and prior to the bringing of said foreclosure action.

Wherefore, plaintiff demands judgment against the defendant for the sum of Fifty-seven Thousand Nine Hun-
[fol. 15] dred Sixty-nine and 34/100 Dollars ($57,969.34), with interest thereon from the 7th day of March, 1934, besides the costs and disbursements of this action.

Robert B. Honeyman, Attorney for Plaintiff, Office and P. O. Address, No. 61 Broadway, Borough of Manhattan, New York City.

(Verified for plaintiff, May 28, 1935.)

EXHIBIT "A" TO AMENDED COMPLAINT

Know all men re these presents, That we, John H. Hanan, of the Borough of Manhattan, City and State of New York, Herbert W. Hanan, and Addison G. Hanan, both of the

Borough of Brooklyn, County of Kings, City and State of New York, hereinafter designated as the obligors, are held and firmly bound unto Martin Taylor and Leander H. LaChance as General Guardians of the person and Estate of Marian Stewart, an infant, and said Martin Taylor and Leander H. LaChance as General Guardians of the person and Estate of Jean Stewart, an infant, hereinafter designated as the obligee, in the sum of sixty thousand ($60,000) Dollars, lawful money of the United States of America, to be paid to the said obligee, their successors, legal representatives or assigns: For which payment, well and truly to be made, we do hereby bind ourselves, our heirs, executors [fol. 16] and administrators jointly and severally firmly by these presents. Sealed with our seals, dated the 9th day of August one thousand nine hundred and twenty.

Whereas, John H. Hanan and John H. Hanan Realty Company have heretofore executed and delivered to Louise L. Williams, J. Harvey Ladew and Richard T. Greene, as Trustees under the will of Rebecca Ladew, deceased, their certain bond or obligation, dated the 10th day of January 1907, conditioned for the payment of the sum of one hundred and eighteen thousand ($118,000) Dollars, as follows: Eighteen thousand dollars thereof on January 10th 1909 and the balance of One hundred thousand dollars thereof on January 10th 1912 with interest thereon at the rate of five per cent. (5%) per annum, which said bond is secured by a certain mortgage, made by said John H. Hanan Realty Company to said obligee named in said bond, bearing even date with said bond, and recorded in the office of the Register of the County of New York on the 14th day of January, 1907, in Liber 231 of Section 2 of mortgages, page 398, and covering certain premises, fully described in said mortgage, situate in the Borough of Manhattan in the City of New York, on the Southeast corner of Elizabeth and Bleecker Streets and more particularly in said mortgage described, and

Whereas the said bond and mortgage by mesne assignments have been assigned to said John H. Hanan and John H. Hanan — by assignment bearing even date herewith is about to assign the said bond and mortgage to the obligee above named; and

[fol. 17] Whereas the said John H. Hanan Realty Company has executed and delivered to the obligee above named

an extension agreement bearing even date herewith wherein and whereby among other things it covenants and agrees to pay the principal sum of sixty thousand dollars ($60,000) being the balance unpaid upon the said bond and mortgage to the said obligee on the 17th day of August, 1923, with interest thereon at the rate of six per cent. (6%) per annum, computed from the 17th day of August, 1920, and to be paid semi-annually on the 17th days of February and August, as in the said extension agreement set forth, and

Whereas, to induce the said obligee to advance the said sum of sixty thousand dollars ($60,000) upon the said bond and mortgage, as aforesaid, and to execute and deliver the said extension agreement the said obligors hath agreed to make, execute and deliver this bond as further and additional security for the payment of the said above-mentioned bond and mortgage.

Now therefore the condition of this obligation is such, that if the parties bound to pay the moneys secured by said bond and mortgage, or the above-bounden obligors, their respective legal representatives or assigns shall well and truly pay, or cause to be paid, to the said obligee, their successors, legal representatives or assigns, the just and full sum of sixty thousand dollars ($60,000), together with all interest thereon, as the same shall become due and payable according to the terms and conditions of the aforesaid bond and mortgage and extension agreement; and if the [fol. 18] said obligors, their respective legal representatives and assigns shall, at all times hereafter, hold, indemnify and save harmless the said obligee, their successors, legal representatives and assigns, from and against all loss, damages, costs, expenses, suits, actions, claims and demands whatsoever, which they may or might otherwise, at any time hereafter, sustain, suffer, be liable to or obliged to pay under or by reason of any default in any of the terms, provisions, covenants or conditions of the aforesaid bond and mortgage or any extension thereof, then this obligation to be void, otherwise to remain in full force and virtue.

John H. Hanan. (L. S.) Herbert W. Hanan. (L. S.) Addison G. Hanan. (L. S.)

Signed, sealed and delivered in the presence of Jean B. Stouvenel.

[fol. 19] State of New York,
County of New York, ss:

On this 9th day of August, in the year one thousand nine hundred and twenty, before me personally came John H. Hanan, Herbert W. Hanan and Addison G. Hanan, to me known and known to me to be the individuals described in and who executed the foregoing instrument, and they duly acknowledged that they executed the same.

Jean B. Stouvenel, Notary Public, Kings Co., New York. Certificate filed in New York County. Kings County Notary #279, Register #1026. New York County Notary #57, Register #1292. Commission Expires March 30, 1921.

(Cancelled stamps to the amount of 50¢.)

In Supreme Court of New York

Opinion by Mr. Justice Smith

Motion by defendant to dismiss the amended complaint is granted. The mortgage moratorium laws apply to the facts alleged in the said complaint.

[fol. 20] In Supreme Court of New York

Stipulation Waiving Certification

Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated that the papers as hereinbefore printed consist of true and correct copies of the notice of appeal, order appealed from, judgment appealed from, and all the papers upon which the Court below acted in making the order and judgment appealed from and the whole thereof, now on file in the office of the Clerk of Kings County, and the certification thereof by the Clerk of said County is hereby waived.

New York, September 5th, 1935.

Robert B. Honeyman, Attorney for Appellant. Anthony F. Tuozzo, Attorney for Respondent.

[fol. 21] IN SUPREME COURT OF NEW YORK, COUNTY OF KINGS

[Title omitted]

NOTICE OF APPEAL TO COURT OF APPEALS

SIR:

Please take notice that pursuant to the order of the Court of Appeals, duly made and entered herein on the 10th day of March, 1936, granting leave to appeal, the appellant above named hereby appeals to the Court of Appeals from the order of the Special Term of the Supreme Court, entered and filed in the Office of the Clerk of the County of Kings on the 3rd day of July, 1935, and from the judgment of the said Special Term, entered and filed in the Office of the Clerk of the County of Kings on the 12th day of July, 1935, and from the order of the Appellate Division of the Supreme Court, in and for the Second Judicial Department, entered on or about the 30th day of December, 1935, affirming the order and judgment of the Special Term, and from the judgment of affirmance, duly entered and filed in the [fol. 22] Office of the Clerk of the County of Kings on the 13th day of January, 1936, and from each and every part of said orders and judgments.

Dated, New York, March 13th, 1936.

Yours, etc., Robert B. Honeyman, Attorney for Appellant, No. 61 Broadway, Borough of Manhattan, New York City.

To Anthony F. Tuozzo, Esq., Attorney for Respondent, 66 Court Street, Borough of Brooklyn, New York City.

[fol. 23] IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION

Present: Hon. Edward Lazansky, Presiding Justice; Hon. J. Addison Young, Hon. William F. Hagarty, Hon. William B. Carswell, Hon. John B. Johnston, Justices.

MARIAN S. HONEYMAN, Appellant,

vs.

HERBERT G. HANAN, as Executor of the Last Will and Testament of Herbert W. Hanan, Deceased, Respondent

ORDER OF AFFIRMANCE—December 30, 1935

The above-named Marian S. Honeyman, the plaintiff in this action, having appealed to the Appellate Division of the Supreme Court from an order of the Supreme Court, entered in the office of the Clerk of the County of Kings on the 3rd day of July, 1935, granting defendant's motion to dismiss the amended complaint, and from the judgment entered thereon in said Clerk's office on the 12th day of July, 1935, herein, and the said appeal having been argued [fol. 24] by Mr. Robert B. Honeyman, of counsel for the appellant, and submitted by Mr. Anthony F. Tuozzo, of counsel for the respondent, and due deliberation having been had thereon,

It is ordered that the order and judgment so appealed from be, and the same hereby are, unanimously affirmed, with $10 costs and disbursements.

Enter.

Wm. B. Carswell, Associate Justice.

IN SUPREME COURT OF NEW YORK, KINGS COUNTY

MARIAN S. HONEYMAN, Plaintiff,

against

HERBERT G. HANAN, as Executor of the Last Will and Testament of Herbert W. Hanan, Deceased, Defendant

JUDGMENT OF AFFIRMANCE APPEALED FROM

The above-named Marian S. Honeyman, the plaintiff in this action, having appealed to the Appellate Division of the Supreme Court from the Judgment entered in the office of [fol. 25] the Clerk of the County of Kings on the 12th day of July, 1935, dismissing the amended complaint herein, and the said appeal having been heard, and the said Appellate

Division having ordered and adjudged that the said judgment so appealed from be unanimously affirmed with $10 costs and disbursements, and a certified copy of the order of the Appellate Division having been duly filed together with the record on said appeal in the office of the Clerk of the County of Kings, and said costs having been duly taxed,

It is, on motion of Anthony F. Tuozzo, attorney for the defendant,

Adjudged that the judgment so appealed from be and the same is in all things unanimously affirmed, and that the defendant of 885 Park Avenue, New York City, recover of the plaintiff the sum of $34.05, costs of said appeal as taxed, and that he have execution therefor.

Dated January 13th, 1936.

John N. Harman, Clerk.

[fol. 26] In Court of Appeals of New York

[Title omitted]

Order Granting Leave to Appeal—March 10, 1936

A motion for leave to appeal to the Court of Appeals in the above case having been heretofore made upon the part of the appellant herein, and papers having been duly submitted thereon, and due deliberation thereupon had:

Ordered, that the said motion be and the same hereby is granted.

A Copy.

John Ludden, Deputy Clerk. (Seal.)

[fol. 27] In Supreme Court of New York

Affidavit of No Opinion by Appellate Division

State of New York,
County of New York, ss:

Robert B. Honeyman, being duly sworn, deposes and says that he is the attorney for plaintiff-appellant in the above-entitled action.

That no written opinion was rendered by any of the Justices of the Supreme Court, Appellate Division, Second Department, in affirming the judgment appealed from herein.

Robert B. Honeyman.

Sworn to before me this 24th day of March, 1936. M. K. Lotterer, Notary Public. N. Y. Co. Clerks No. 201. N. Y. Co. Register's No. 7L211. Kings County Clerk's No. 37, Register's No. 7208. Commission Expires March 30th, 1937. Certificate filed in New York County.

[fol. 28] In Supreme Court of New York

Stipulation Waiving Certification on Appeal to Court of Appeals

Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated by the attorneys for the respective parties that the foregoing are true copies of the notice of appeal to the Court of Appeals, the order of affirmance herein, the judgment of affirmance appealed from, the order granting leave to appeal and the record on appeal as filed with the Clerk of the Appellate Division, Second Department, all of which are now on file in the office of the Clerk of the County of Kings; and certification thereof by said Clerk is hereby waived.

Dated, New York, March 25, 1936.

Robert B. Honeyman, Attorney for Plaintiff-Appellant. Anthony F. Tuozzo, Attorney for Defendant-Respondent.

[fol. 29] In Supreme Court of New York, County of Kings

[Title omitted]

Order on Remittitur—June 11, 1936

The above named plaintiff, pursuant to the order of the Court of Appeals duly made and entered herein on the 10th day of March, 1936 granting leave to appeal, having appealed to the Court of Appeals from the order of the

Special Term of this Court entered and filed in the office of the Clerk of the County of Kings on the 3rd day of July, 1935, and from the judgment of the said Special Term entered and filed in the office of the Clerk of the County of Kings on the 12th day of July, 1935, and from the order of the Appellate Division of the Supreme Court in and for the Second Judicial Department entered on or about the 30th day of December, 1935 affirming the said order and judgment of the said Special Term, and from the judgment of affirmance duly entered and filed in the office of the Clerk of the County of Kings on the 13th day of January, 1936, and from each and every part of said orders and judgments, and the Court of Appeals having heard said appeal and ordered and adjudged that the judgment of the Appellate Division of the Supreme Court appealed from herein be affirmed and judgment entered for the defendant [fol. 30] with costs, and having ordered and adjudged that the record of said appeal and the proceedings therein be remitted to the Supreme Court there to be proceeded upon according to law, and the remittitur from the Court of Appeals having been heretofore duly filed in the office of the Clerk of the County of Kings;

Now on motion of Anthony F. Tuozzo, attorney for the defendant herein, it is

Ordered that the said judgment of the Court of Appeals be and the same hereby is made the judgment of this Court.

Enter.

C. C. L., J. S. C.

Granted June 11, 1936. John N. Harman, Clerk.

[fol. 30½] Sir:

Please take notice that the within is a true copy of an Order this day made and entered herein in the office of the Clerk of Kings County.

Dated, N. Y., June 12th, 1936.

Yours, etc., Anthony F. Tuozzo, Attorney for Defendant, Office and Post Office Address, 66 Court Street, Borough of Brooklyn, New York City.

To Robert B. Honeyman, Esq., Attorney for Plaintiff.

Due and timely service of a copy of the within Rec'd June 17/36, is hereby admitted.

Dated, N. Y., —— —, 193-.

—— —— Attorney for ——.

[fol. 31] In Supreme Court of New York, Kings County

Marian S. Honeyman, Plaintiff,

against

Herbert G. Hanan, as Executor of the Last Will and Testament of Herbert W. Hanan, Deceased, Defendant

Judgment on Remittitur

A judgment in this action in favor of the defendant and against the plaintiff herein having been entered in this court on the 12th day of July, 1935; and the plaintiff having appealed from said judgment to the Appellate Division of this Court for the Second Department, and the said judgment in favor of the defendant having been affirmed by this Court at said Appellate Division, and judgment having been rendered thereon on the 13th day of January, 1936, and that defendant recover against the plaintiff the sum of $34.05, costs of said appeal; and the plaintiff having appealed therefrom to the Court of Appeals; and the said Court of Appeals having sent hither its remittitur, filed herein on the 12th day of June, 1936, by which it appears that the said Court of Appeals has affirmed the said judgment in all things with costs, and has given judgment accordingly, and has remitted the judgment of said Court of Appeals to this Court to be enforced according to law; and this Court having by an order duly entered herein on the 13 day of June, 1936, ordered that said judgment be made the judgment of this Court, and the defendant's costs having been duly taxed at the sum of $139.02/100 Dollars;

Now on motion of Anthony F. Tuozzo, attorney for the defendant, it is

[fol. 32] Adjudged that the said judgment of the Appellate Division be and the same is hereby in all things affirmed with costs, and that the defendant of 885 Park Ave., N. Y. C., recover of the plaintiff the sum of $139.02/100, costs as taxed, and that he have execution therefor.

Dated June 19, 1936.

John N. Harman, Clerk.

[fol. 32½] SIR:

Please take notice that the within is a true copy of a Judgment this day made and entered herein in the office of the Clerk of Kings County.

Dated, N. Y., June 19th, 1936.

Yours, etc., Anthony F. Tuozzo, Attorney for Defendant, Office and Post Office Address, 66 Court Street, Borough of Brooklyn, New York City.

To Robert B. Honeyman, Esq., Attorney for Plaintiff.

[fol. 33] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD

It is Hereby Stipulated by counsel for both sides in the above cause that the Clerk, in making up the transcript, shall follow the papers and records as shown in the transcript on file in the Court of Appeals and the Supreme Court of the State of New York without omission or addition.

Dated Sept. 2, 1936.

Robt. B. Honeyman,. Attorney for Appellant. Anthony F. Tuozzo, Attorney for Appellee.

[fol. 34] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL

The petition of Marian S. Honeyman, the appellant in the above entitled cause, for an appeal in the above cause to the Supreme Court of the United States from the judgment of the Supreme Court of the State of New York entered upon the remittitur of the Court of Appeals of the State of New York, having been filed with the Clerk of this Court and presented herein, accompanied by assignment of errors and statement as to jurisdiction, all as provided by

the Rules of the Supreme Court of the United States, and the record in this cause having been considered, it is hereby

Ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from a final judgment dated the 19th day of June, 1936, of the Supreme Court of the State of New York, as prayed in said petition, and that the Clerk of the Supreme Court of the State of New York, in the County of Kings, shall, within forty days from this date, make and transmit to the Supreme Court of the United States, under his hand and seal of said Court, a true copy of the material parts of the record herein, which shall be designated by a præcipe or stipulation of the [fol. 35] parties, or their counsel herein, all in accordance with the Rules of the Supreme Court of the United States.

It is further Ordered that the said Appellant shall give a good and sufficient bond, in the sum of Five Hundred Dollars, that said appellant shall prosecute said appeal to effect and answer all costs, if she fails to make her plea good, and that said supersedeas bond, when filed and approved, shall stay the sending down of the mandate herein and of all proceeds in this cause until the final disposition of this cause by the Supreme Court of the United States.

September 2, 1936.

Frederick E. Crane, Chief Judge of the Court of Appeals of the State of New York.

[fol. 36] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL

To the Chief Judge of the Court of Appeals of the State of New York:

Your Petitioner, Marian S. Honeyman, respectfully shows:

Your petitioner is the appellant in the above entitled action.

This action is brought to establish the liability of the decedent's estate for the balance due upon a loan evidenced by a written obligation. The summons and complaint were

served May 10, 1935, and an amended complaint was served May 28, 1935. No answer was served and no issue of fact was presented.

The amended complaint sets forth a cause of action upon a bond or instrument in writing evidencing a loan or advance of Sixty Thousand Dollars ($60,000.) made August 17, 1920 by petitioner's guardians to the respondent's testator and his father, John H. Hanan, and his brother, Addison G. Hanan. This written instrument (Record, Ex. A, pp. 15-19) is the joint and several obligation of the obligors to pay the said sum of Sixty Thousand Dollars ($60,000.) with [fol. 37] interest. As security for the loan, the respondent's testator and his co-obligors assigned to petitioner's guardians a bond of the John H. Hanan Realty Co. executed January 14, 1907, together with a mortgage on certain real estate in New York City and title to which had become vested in respondent's testator and his co-obligors.

The 1920 obligation sued upon in this action recites that it is given to induce the obligee to advance the said sum of Sixty Thousand Dollars ($60,000.) upon the 1907 bond and mortgage of the John H. Hanan Realty Co. and as further and additional security for the payment of the 1907 bond and mortgage (Fol. 50, Record p. 17).

John H. Hanan and Addison G. Hanan died prior to 1933. In 1933 Herbert W. Hanan, respondent's testator, died. Default existing in the payment of interest and taxes on the property mortgaged to secure the Realty Company's 1907 bond, foreclosure proceedings were brought, and upon a judgment of foreclosure and sale against the Realty Company the mortgaged real estate was sold. After application of the proceeds of sale to the amount due for principal, interest, taxes and expenses, there was a deficiency in the sum of $57,969.34. Your petitioner made application for a deficiency judgment against the John H. Hanan Realty Co., which was denied.

Your petitioner, having exhausted her remedies as against the collateral, brought this action upon the 1920 bond against the respondent to establish her claim for the balance due her upon the loan against the Estate of respondent's decedent, Herbert W. Hanan.

As before stated, no issue was joined. The respondent moved the Court at Special Term for judgment dismissing the amended complaint upon the ground that it did not

[fol. 38] state facts sufficient to constitute a cause of action. The Court granted the motion in the following memorandum of decision:

"Motion by defendant to dismiss the amended complaint is granted. The mortgage moratorium laws apply to the facts alleged in the said complaint",

and judgment of dismissal was entered with costs. An appeal was taken to the Appellate Division, Second Department, and the said judgment of the Special Term was affirmed with costs, without any opinion whatever. The Court of Appeals granted the motion for leave to appeal to the Court of Appeals, and the appeal was argued and judgment of the lower Court affirmed, with costs, without any opinion. A motion was made to the Court of Appeals for an order amending its remittitur and the said motion was granted. An order was thereafter entered amending the remittitur by adding the words:

"A question under the Federal Constitution was presented and necessarily passed upon by this court. The plaintiff contended that chapter 794 of the Laws of the State of New York, enacted in 1933, as amended (secs. 1083-a and 1083-b of Civil Practice Act), impair the obligations of contracts, and thus violate article 1, section 10, of the Constitution of the United States. This court held that such laws do not violate said provision of article 1, section 10, of the Constitution of the United States."

That thereafter, the remittitur of this Court was returned to the Clerk of the Court of Appeals of the State of New York and was duly amended in accordance with the order above referred to. Thereafter, and on or about the 19th day of June, 1936, judgment was entered in the Supreme Court upon the remittitur as amended by the Court of Appeals.

In accordance with Section 237 of the Judicial Code and in accordance with the Rules of the Supreme Court of the United States, your petitioner respectfully shows that this [fol. 39] case is one in which a review can be had in the Supreme Court of the United States as a matter of right.

The errors upon which your petitioner claims to be entitled to an appeal are more fully set forth in the assign-

ment of errors filed herewith, and there is likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States, as provided by the Rules of the said Supreme Court.

Wherefore, your petitioner prays for the allowance of an appeal from the said Court of Appeals of the State of New York, the highest Court of said State in which a decision in this cause can be had, to the Supreme Court of the United States, in order that the decision and final judgment of the said Supreme Court of the State of New York may be examined and reversed, and also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of the State of New York, County of Kings, under his hand and seal of said Court, may be sent to the Supreme Court of the United States, as provided by law, and that an order be made touching the security to be required of the petitioner, and that the bond tendered by the petitioner be approved.

Dated, August 24th, 1936.

Robert B. Honeyman, Attorney for Petitioner.

[fol. 40] Citation, in usual form, omitted in printing.

[fol. 41] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS

The appellant assigns the following errors in the record and proceedings in this case:

1. The State Court erred in holding that Chapter 794 of the Laws of 1933 of the State of New York was a bar to appellant's action to establish her claim against the decedent's estate for the sum remaining unpaid upon a loan to decedent made in 1920, evidenced by a written obligation to pay, as security for which there was pledged and assigned to appellant a bond and mortgage executed by another in 1907, and which had been foreclosed by appel-

lant after the enactment and taking effect of said legislative act for non-payment of interest and taxes, and the proceeds of sale duly credited upon account of the loan.

2. The State Court erred in refusing to hold, as contended by the appellant, that the Legislature of the State of New York may not delegate to the Court the power to fix the value of real estate or a mortgage thereon pledged as security for a loan and to limit the contract right of the [fol. 42] appellant creditor to recover upon said loan to the difference between the amount of the loan and the value of the security as fixed by the Court.

3. The State Court erred in refusing to hold that Chapter 794 of the Laws of 1933 violates the Federal Constitution by requiring that mortgagees are required to accept the proceeds of the sale of mortgaged property or the property itself, if bid in by the mortgagee at the amount determined by the State Court to be market value of the property, as a credit or offset against the mortgage debt.

4. The State Court erred in holding that Chapter 794 of the Laws of 1933 applied to and barred appellant's right to maintain this action to recover the balance unpaid upon the loan evidenced by the instrument, Exhibit A, attached to the complaint, for the reason that the indebtedness of the decedent was a primary obligation to repay moneys loaned to decedent and not a guaranty of a mortgage upon real property, executed simultaneously therewith.

5. The State Court erred in refusing to hold that the Legislature may not limit or destroy appellant's claim for the unpaid balance of the loan made to decedent by requiring fictitious credits thereupon, or the allowance of appellant's offsets.

6. The State Court erred in refusing to hold that the Act of the Legislature of the State of New York, Chapter 794 of the Laws of 1933, is repugnant to Article 1, Section 10, of the Constitution of the United States in that it impairs appellant's contract rights, denies the enforcement thereof, and permits the repudiation of decedent's debt, and in that it destroy's appellant's rights and property without due process and without compensation.

[fol. 43] 7. The State Court erred in refusing to hold that Chapter 794 of the Laws of 1933 of the State of New

York violates the Constitution of the United States in that it limits and abrogates contract rights in the matter of deficiency judgments and actions on bonds or other written obligations without regard to the necessities or the protection of the creditor or the ability of the debtor to pay.

Wherefore, on account of the errors hereinbefore assigned, appellant prays that the said judgment of the State Court of the State of New York, dated the 19th day of June, 1936, in the above entitled cause, be reversed, and judgment entered in favor of this appellant.

Dated, September 2, 1936.

Robert B. Honeyman, Attorney for Appellant.

[fols. 44-45] Bond on appeal for $500.00, approved and filed September 5, 1936, omitted in printing.

[fol. 46] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION AS TO PRINTING RECORD—Filed September 15, 1936

Comes now the appellant and adopts its assignments of error as its statement of the points to be relied upon, and represents that the whole of the record, as filed, is necessary for the consideration of the case.

Dated, New York, September 11th, 1936.

Robt. B. Honeyman, Solicitor for the Appellant.

[fol. 46½] STATE OF NEW YORK,
County of New York, ss:

Burton G. Rudnick, being duly sworn, deposes and says, that he is over the age of twenty-one; that on the 11th day of September, 1936, he served the within Statement of Points and Designation of Parts of Record to be Printed, on Anthony F. Tuozza, the attorney for the Appellee herein, by delivering to and leaving with the person in

charge of said attorney's office a true copy thereof, at 66 Court Street, Brooklyn, N. Y.

Burton G. Rudnick.

Subscribed and sworn to before me, this 11th day of September, 1936. M. K. Lotterer, Notary Public. N. Y. Co. Clerk's No. 201. N. Y. Co. Register's No. 7L241. Kings County Clerk's No. 37 Register's No. 7208. Commission Expires March 30th, 1937.

[fol. 47] [File endorsement omitted.]

[fol. 48] Service of 3 copies of the within Case on Appeal admitted this 25th day of March, 1936.

Anthony F. Tuozza, Atty. for Respondent.

Endorsed on cover: Enter Robert B. Honeyman. File No. 40,910. New York, Supreme Court. Term No. 370. Marian S. Honeyman, appellant, vs. Herbert G. Hanan, as Executor of the last will and testament of Herbert W. Hanan, deceased. Filed September 15, 1936. Term No. 370, O. T., 1936.

INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Motion for leave to amend statement as to jurisdiction	3
Amended statement as to jurisdiction	3
Statutory provision believed to sustain jurisdiction	5
Statute of New York the validity of which is involved	5
Date of judgment to be reviewed and of application for appeal	8
Nature of the case and of the rulings	10

Case Cited.

Home Building & Loan Association v. Blaisdell, 290 U. S. 398	11

Statutes Cited.

Judicial Code, Sec. 237 (Title 28 U. S. C. sec. 344)	1, 5
Laws of 1933 (New York), chapter 794	5, 11
Laws of 1934, chapter 277	8
Laws of 1935, chapter 2	8
Laws of 1936, chapter 87	8

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 370

MARIAN S. HONEYMAN,

Appellant,

vs.

HERBERT G. HANAN, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF HERBERT W. HANAN, DECEASED,

Appellee.

STATEMENT AS TO JURISDICTION.

The appellant contends that the Supreme Court of the United States has jurisdiction upon an appeal to review the judgment of the Supreme Court of the State of New York in question.

This appeal comes directly within the provision of Section 237 of the Federal Judicial Code (28 U. S. C. #344). It is a final judgment of the highest Court of the State of New York in which a decision in the suit could be had. There is drawn in question the validity of a statute of the State of New York and the decision of the Court of Appeals of the State of New York is in favor of its validity. The

Court of Appeals of the State of New York, by its order and its remittitur, has stated:

> "A question under the Federal Constitution was presented and necessarily passed upon by this court. The plaintiff contended that chapter 794 of the Laws of the State of New York, enacted in 1933, as amended (Secs. 1083-a and 1083-b of Civil Practice Act), impair the obligations of contracts, and thus violate article 1, section 10, of the Constitution of the United States. This court held that such laws do not violate said provision of article 1, section 10, of the Constitution of the United States."

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 370

MARIAN S. HONEYMAN,

Appellant,

vs.

HERBERT G. HANAN, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF HERBERT W. HANAN, DECEASED,

Appellee.

And now comes the appellant in the above entitled cause and moves the Court for leave to amend her statement as to jurisdiction as will appear from the amended statement herewith filed; that said amendments are material and necessary to make said statement to conform to the requirements of Rule 12 of this Court as amended to take effect July 1, 1936; that matters incorporated in the amended statement were inadvertently not incorporated in the original statement by reason of the absence of appellant's counsel from his office from June 13th to September 1st last;

Wherefore, appellant prays that the amendment be allowed and considered as part of the statement as to jurisdiction in this cause.

September 16th, 1936.

ROBT. B. HONEYMAN,
Solicitor for Appellant.